



INDUSTRY CIRCULAR

DEPARTMENT OF
THE TREASURY

Bureau of Alcohol, Tobacco and Firearms
Washington, D. C. 20226

Number: 84-5 Date: APRIL 27, 1984

REDUCED ALCOHOL BEER

Brewers & Importers of Malt Beverages

PURPOSE. This circular notifies industry members of an ATF Ruling which will be published in the next issue of the Alcohol, Tobacco and Firearms Bulletin. This ruling will read substantially as follows:

BACKGROUND. The Bureau of Alcohol, Tobacco and Firearms has been asked whether a brewer, pursuant to sections 5(e) and 5(f) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. § 201 *et seq.*, may label and advertise a malt beverage as a reduced or low alcohol product.

During the past several months, the Bureau has received several inquiries from brewers requesting permission to label and advertise their new malt beverage product as a reduced or low alcohol product. In each instance, the malt beverage product contained no more than 2.5 percent alcohol by volume.

Sections 5(e) and 5(f) of the FAA Act provide in general terms that malt beverage labeling and advertising shall not contain statements concerning the alcoholic content of the product. More specifically, section 5(e)(2) prohibits statements of, or statements likely to be considered as statements of, alcoholic content of malt beverages unless required by State law. Section 5(f)(2) provides a similar prohibition without regard to what is required by State law.

Regulations which implement these provisions are set forth in 27 C.F.R. Part 7. In particular, sections 7.26 and 7.29(f) prohibit any statement as to the actual alcoholic content of the malt beverage from appearing on the label unless required by State law. Furthermore, section 7.29(f) prohibits references to "strong," "full strength" and similar words or statements that are likely to be considered as statements of alcoholic content except where required by State law. Similar prohibitions exist for advertising without references to State law requirements. See 27 C.F.R. 7.54(c).

The legislative history of the FAA Act discusses the meaning of the term "statements likely to be considered as statements of alcoholic content." It indicates that the term was intended to prohibit statements likely to be considered as statements of alcoholic content where such statements represent that the product has a high alcoholic content. The following excerpt from the legislative history is illustrative:

"Legitimate members of the industry have suffered seriously from unfair competition resulting from labeling and advertising that uses such terms as 'strong', 'extra strength', 'high-test', 'high proof', 'prewar strength', '14 percent original extract', and from brand names or other statements or references which include conspicuous numerals or symbols intending to suggest that the numerals or symbols represent the alcoholic content. Usually such representations of excess alcoholic content are false, but irrespective of their falsity, their abuse has grown to such an extent since repeal that the prohibition of all such statements is in the interest of the consumer and the promotion of fair competition (H. Rept. No. 1542, on H.R. 8870, 74th Cong., Federal Alcohol Control Bill, pp. 12 and 13)."

The above excerpt demonstrates that Congress was concerned with prohibiting statements of alcoholic strength in the labeling and advertising of malt beverages. See, Rev. Rul. 54-513, 1954-2 C.B. 593, which held, in part, that references likely to be considered as indicative of alcoholic content, such as the phrase "Is it stronger?" are prohibited by section 7.54(c) of the regulations. It appears that Congress was not concerned with prohibiting labeling and advertising of malt beverages on the basis of reduced or low alcohol content, since such advertising was not perceived as a problem in 1935.

In view of the statute's purpose, the Bureau believes that the phrase "statements likely to be considered as statements of alcoholic content" relates only to statements that represent the malt beverage as high in alcohol content. The statute would not preclude statements indicating that the alcohol content of the malt beverage is below the range of alcohol content found in regular malt beverages.

HELD. Sections 5(e) and 5(f) of the FAA Act prohibit, in the labeling and advertising of malt beverages, statements of alcohol content of malt beverages and statements likely to be considered as statements of alcohol content of malt beverages.

The Bureau continues to subscribe to its longstanding position that statements of actual alcohol content by weight or volume fall within the proscriptions of sections 5(e) and 5(f) of the FAA Act as well as sections 7.26, 7.29, and 7.54(c) of the regulations. However, as to statements likely to be considered as statements of alcoholic content of malt beverages, the Bureau interprets this term to be restricted to statements of high alcohol content.

Furthermore, the Bureau has determined that statements of low or reduced alcohol content when used with malt beverage products containing less than 2.5 percent alcohol by volume are not misleading. Since the alcohol content of regular malt beverages falls within the range of 3.5 to 5.0 percent alcohol by volume, malt beverage products containing less than 2.5 percent alcohol by volume have a substantially lower alcohol content and may accurately be described as low alcohol or reduced alcohol malt beverages.

Therefore, the Bureau will permit malt beverage products containing less than 2.5 percent alcohol by volume to be labeled and advertised as a reduced alcohol or low alcohol malt beverage. Labeling and advertising for reduced alcohol or low alcohol malt beverages may use statements comparing the alcohol content of the reduced or low alcohol product to the alcohol content of the brewer's regular malt beverage or to any other specific brand of a regular malt beverage. Such comparative statements may not refer to the actual alcohol content of either of the products being compared. Examples of permissible statements are as follows:

"This product is a reduced/low alcohol malt beverage."

"This Brand Name is a reduced/low alcohol pilsner beer."

"This product contains less than half the alcohol contained in Brand Name beer."

"Brand Name contains half the alcohol of our Brand Name regular beer."

INQUIRIES. Inquiries concerning this circular should refer to its number and be addressed to the Associate Director (Compliance Operations), Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, N.W., Washington, DC 20226.

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